

AMENDED IN SENATE MARCH 26, 2015

AMENDED IN SENATE FEBRUARY 4, 2015

SENATE BILL

No. 18

Introduced by Senator Hill

December 1, 2014

~~An act to add Section 4216.11 to the Government Code, and to amend Sections 1702.5, 2104, and 2104.5 of, and to add Section 320.5 to, the Public Utilities Code, relating to utility service, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately. An act to add Section 307.5 to the Public Utilities Code, relating to the Public Utilities Commission.~~

LEGISLATIVE COUNSEL'S DIGEST

~~SB 18, as amended, Hill. Gas and Electrical Corporations: fines and penalties: underground utility facilities. Public Utilities Commission: outside counsel.~~

The Public Utilities Act authorizes the Public Utilities Commission to appoint an attorney for the commission who holds that office at the pleasure of the commission. The act requires the attorney to represent and appear for the people and the commission in all actions and proceedings involving any question under the act or under any order or act of the commission. The act requires the attorney to commence, prosecute, and expedite the final determination of all actions and proceedings directed or authorized by the president, except as otherwise directed or authorized by vote of the commission, to advise the commission and each commissioner in regard to all matters in connection with the powers and duties of the commission or a commissioner, when requested, and generally, to perform all duties

and services as attorney to the commission that the president, or vote of the commission, may require of him or her.

This bill would require that any contract or other agreement by the commission for services by outside legal counsel with respect to a criminal matter be subject to a 30-day review by the Joint Legislative Budget Committee before the agreement is entered into.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, as defined. The Public Utilities Act requires the commission to investigate the cause of all accidents occurring upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and authorizes the commission to make any order or recommendation with respect to the investigation that it determines to be just and reasonable. The act provides that any public utility that violates any provision of the California Constitution or the act, or that fails or neglects to comply with any order, decision, decree, rule, direction, demand, or requirement of the commission, where a penalty has not otherwise been provided, is subject to a penalty of not less than \$500 and not more than \$50,000 for each offense. Existing law requires that any fine or penalty imposed by the commission and collected from a public utility be paid to the State Treasury to the credit of the General Fund. The act includes provisions that are specific to gas corporations that involve safety standards for pipeline facilities or the transportation of gas in the state.~~

~~This bill would revise the provisions that are specific to gas corporations that involve safety standards for pipeline facilities or the transportation of gas in the state, to authorize the commission to order that all or a portion of a fine or penalty levied against a gas corporation in three specified proceedings be held in a separate account by the gas corporation to offset investments for pipeline replacement to be undertaken within the service territory of the corporation that would otherwise be recovered from the corporation's ratepayers. The bill would require that moneys ordered by the commission to be held in a separate account be used only for the purpose of offsetting investments by the gas corporation for pipeline replacement to be undertaken within the service territory of the corporation, and only if the investments would otherwise be recovered in rates from the utility's ratepayers. The bill would require that any moneys not used for these purposes be paid to the General Fund 5 years after the date of their deposit into the~~

account. The bill would require the commission to allocate \$30,000,000 from the separate account to fund an independent monitor for a period of no less than 5 years to oversee the pipeline operations of the gas corporation and the effectiveness of the commission's regulatory oversight of those pipeline operations and would require the commission to allocate \$50,000,000 in seed money from the separate account to fund the operations of a pipeline safety trust. By authorizing specified uses of state penalty moneys, this bill would make an appropriation. The bill would also require the commission to allocate \$300,000,000 from the separate account to the General Fund. The bill would authorize the commission to adjust the above-described allocations from the separate account if the fines and penalties levied against the gas corporation in the three specified proceedings are less than \$950,000,000 in total.

This bill would establish the California Underground Facilities Safe Excavation Authority. The bill would create the Safe Energy Infrastructure and Excavation Fund in the State Treasury and would provide that moneys deposited into the fund are to be used to cover the administrative expenses of the authority, upon appropriation by the Legislature. The bill would authorize the commission to use excess moneys in the fund for specified purposes relating to the safety of underground utilities, upon appropriation by the Legislature.

Existing law requires the commission to develop and implement a safety enforcement program that is applicable to gas corporations and electrical corporations and that includes procedures for monitoring, data tracking and analysis, and investigations, as well as issuance of citations by commission staff, under the direction of the executive director of the commission, for correction and punishment of safety violations. That law requires the commission to develop and implement an appeals process to govern issuance and appeal of citations, or resolution of corrective action orders. That law requires the commission to implement the safety enforcement program for gas safety by July 1, 2014, and for electrical safety by January 1, 2015.

This bill would require that moneys collected as a result of the issuance of citations to gas corporations and electrical corporations pursuant to the above-described law be deposited in the Safe Energy Infrastructure and Excavation Fund.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes~~-no. Fiscal committee:
yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 307.5 is added to the Public Utilities
2 Code, to read:

3 307.5. Any contract or other agreement by the commission for
4 services by outside legal counsel with respect to a criminal matter
5 shall be subject to a 30-day review by the Joint Legislative Budget
6 Committee before the agreement is entered into.

7 SECTION 1. ~~Section 4216.11 is added to the Government~~
8 Code, to read:

9 4216.11. ~~The California Underground Facilities Safe~~
10 Excavation Authority is hereby created.

11 SEC. 2. ~~Section 320.5 is added to the Public Utilities Code, to~~
12 read:

13 320.5. (a) ~~The Safe Energy Infrastructure and Excavation Fund~~
14 is hereby established in the State Treasury. ~~Moneys deposited into~~
15 the fund shall be used to cover the administrative expenses of the
16 California Underground Facilities Safe Excavation Authority, upon
17 appropriation by the Legislature.

18 (b) ~~Any excess moneys in the fund that are not necessary for~~
19 the administrative expenses of the California Underground
20 Facilities Safe Excavation Authority may, upon appropriation by
21 the Legislature, be apportioned by the commission for the following
22 purposes:

23 (1) ~~The California Underground Facilities Safe Excavation~~
24 Authority, for the purpose of the education and training of persons
25 who violate Article 2 (commencing with Section 4216) of Chapter
26 3.1 of Division 5 of Title 1 of the Government Code.

27 (2) ~~Regional notification centers, as defined in Section 4216 of~~
28 the Government Code, to cover the cost of public education and
29 outreach programs designed to promote excavation safety around
30 underground facilities.

31 (3) ~~The commission, to further a workforce development~~
32 program, which shall be consistent with its equal employment
33 opportunity program, that recruits and trains safety staff to perform
34 the highest quality gas and electric utility inspections, audits,
35 accident investigations, and data tracking and analysis. The

1 ~~commission may only apportion moneys for this purpose upon~~
2 ~~commission approval of the workforce development program at a~~
3 ~~meeting of the commission.~~

4 SEC. 3. ~~Section 1702.5 of the Public Utilities Code is amended~~
5 ~~to read:~~

6 ~~1702.5.—(a) The commission shall, in an existing or new~~
7 ~~proceeding, develop and implement a safety enforcement program~~
8 ~~applicable to gas corporations and electrical corporations which~~
9 ~~includes procedures for monitoring, data tracking and analysis,~~
10 ~~and investigations, as well as issuance of citations by commission~~
11 ~~staff, under the direction of the executive director. The enforcement~~
12 ~~program shall be designed to improve gas and electrical system~~
13 ~~safety through the enforcement of applicable law, or order or rule~~
14 ~~of the commission related to safety using a variety of enforcement~~
15 ~~mechanisms, including the issuance of corrective actions, orders,~~
16 ~~and citations by designated commission staff, and recommendations~~
17 ~~for action made to the commission by designated commission staff.~~

18 ~~(1) When considering the issuance of citations and assessment~~
19 ~~of penalties, the commission staff shall take into account voluntary~~
20 ~~reporting of potential violations, voluntary removal or resolution~~
21 ~~efforts undertaken, the prior history of violations, the gravity of~~
22 ~~the violation, and the degree of culpability.~~

23 ~~(2) The procedures shall include, but are not limited to,~~
24 ~~providing notice of violation within a reasonable period of time~~
25 ~~after the discovery of the violation.~~

26 ~~(3) The commission shall adopt an administrative limit on the~~
27 ~~amount of monetary penalty that may be set by commission staff.~~

28 ~~(b) The commission shall develop and implement an appeals~~
29 ~~process to govern the issuance and appeal of citations or resolution~~
30 ~~of corrective action orders issued by the commission staff. The~~
31 ~~appeals process shall provide the respondent a reasonable period~~
32 ~~of time, upon receiving a citation, to file a notice of appeal, shall~~
33 ~~afford an opportunity for a hearing, and shall require the hearing~~
34 ~~officer to expeditiously provide a draft disposition.~~

35 ~~(c) The commission shall, within a reasonable time set by the~~
36 ~~commission, conclude a safety enforcement action with a finding~~
37 ~~of violation, a corrective action order, a citation, a determination~~
38 ~~of no violation, approval of the corrective actions undertaken by~~
39 ~~the gas corporation or electrical corporation, or other action. The~~
40 ~~commission may institute a formal proceeding regarding the alleged~~

1 violation, potentially resulting in additional enforcement action,
2 regardless of any enforcement action taken at the commission staff
3 level.

4 (d) The commission shall implement the safety enforcement
5 program for gas safety by July 1, 2014, and implement the safety
6 enforcement program for electrical safety no later than January 1,
7 2015.

8 (e) This section does not apply to an exempt wholesale
9 generator, a qualifying small power producer, or qualifying
10 cogenerator, as defined in Section 796 of Title 16 of the United
11 States Code and the regulations enacted pursuant thereto. Nothing
12 in this section affects the commission's authority pursuant to
13 Section 761.3.

14 (f) Moneys collected as a result of the issuance of citations
15 pursuant to this section shall be deposited in the Safe Energy
16 Infrastructure and Excavation Fund.

17 SEC. 4. Section 2104 of the Public Utilities Code is amended
18 to read:

19 2104. (a) Except as provided by Sections 2100 and 2107.5,
20 actions to recover penalties under this part shall be brought in the
21 name of the people of the State of California, in the superior court
22 in and for the county, or city and county, in which the cause or
23 some part thereof arose, or in which the corporation complained
24 of has its principal place of business, or in which the person
25 complained of resides. The action shall be commenced and
26 prosecuted to final judgment by the attorney or agent of the
27 commission. All fines and penalties may be sued for and recovered.
28 The commission may enjoin the sale of a public utility's or
29 common carrier's assets to satisfy unpaid fines and penalties. The
30 commission may use any of the remedies afforded to a creditor
31 under the Uniform Fraudulent Transfer Act (Chapter 1
32 (commencing with Section 3439) of Title 2 of Part 2 of Division
33 4 of the Civil Code). Respondents who fraudulently transfer assets
34 to avoid paying commission-imposed fines or penalties are subject
35 to prosecution under Sections 154, 531, and 531a of the Penal
36 Code. In all of these actions, the procedure and rules of evidence
37 shall be the same as in ordinary civil actions, except for
38 prosecutions under the Penal Code or as otherwise herein provided.
39 Except as provided in Sections 1702.5 and 2104.5, all fines and
40 penalties recovered by the state in any action, together with the

1 costs thereof, shall be paid into the State Treasury to the credit of
2 the General Fund. Any action may be compromised or discontinued
3 on application of the commission upon the terms the court approves
4 and orders.

5 (b) This section shall become operative on January 1, 2014.

6 SEC. 5. Section 2104.5 of the Public Utilities Code is amended
7 to read:

8 2104.5. (a) Any penalty for violation of any provision of this
9 act, or of any rule, regulation, general order, or order of the
10 commission, involving safety standards for pipeline facilities or
11 the transportation of gas in the State of California, may be
12 compromised by the commission. In determining the amount of
13 the penalty, or the amount agreed upon in compromise, the
14 appropriateness of the penalty to the size of the business of the
15 person charged, the gravity of the violation, and the good faith of
16 the person charged in attempting to achieve compliance, after
17 notification of a violation, shall be considered. The amount of any
18 penalty, when finally determined, or the amount agreed upon in
19 compromise, may be recovered in a civil action in the name of the
20 people of the State of California in the superior court in and for
21 the county, or city and county in which the cause or some part
22 thereof arose, or in which the corporation complained of has its
23 principal place of business or the person complained of resides.
24 In any such action, all penalties incurred, or amounts agreed upon
25 in compromise for violations committed up to the time of
26 commencing the action, may be sued for and recovered. In all
27 those actions, the procedure and rules of evidence shall be the
28 same as in ordinary civil actions, except as otherwise herein
29 provided. All fines and penalties recovered by the state in any
30 action, together with the costs thereof, shall be paid into the State
31 Treasury to the credit of the General Fund, except upon order of
32 the commission pursuant to subdivision (b) or as described in
33 Section 1702.5.

34 (b) The commission shall order that any fine or penalty levied
35 against a gas corporation in Investigation 11-02-016, Investigation
36 11-11-009, or Investigation 12-01-007, be held in a separate
37 account by the gas corporation to offset investments for pipeline
38 replacement to be undertaken within the service territory of the
39 corporation and that would otherwise be recovered from the
40 corporation's ratepayers.

~~(e) The commission shall set a rate of interest for an account established pursuant to subdivision (b).~~

~~(d) Any moneys ordered by the commission to be held in a separate account pursuant to subdivision (b) shall be used only for the purpose of offsetting investments by the gas corporation for pipeline replacement to be undertaken within the service territory of the corporation, and only if the investments would otherwise be recovered in rates from the utility's ratepayers. Any moneys not used for these purposes shall, five years after the date of their deposit into the account, be paid to the General Fund.~~

~~(e) Notwithstanding subdivision (d), funds held in a separate account pursuant to subdivision (b) shall be allocated by the commission in the following manner:~~

~~(1) Thirty million dollars (\$30,000,000) to fund an independent monitor for a period of no less than five years to oversee both the pipeline operations of the gas corporation described in subdivision (b) and the effectiveness of the commission's regulatory oversight of those pipeline operations.~~

~~(2) Fifty million dollars (\$50,000,000) in seed money to fund the operations of a pipeline safety trust to represent and advocate on behalf of the interests of the public utility customers and subscribers within the jurisdiction of the commission in all appropriate venues.~~

~~(3) Three hundred million dollars (\$300,000,000) to the General Fund.~~

~~(f) If any fines or penalties levied against a gas corporation pursuant to the investigations specified in subdivision (b) are less than nine hundred fifty million dollars (\$950,000,000) in total, the commission may adjust the amount of the allocations specified in subdivision (e).~~

~~SEC. 6.— This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~In order to address and resolve significant financial issues presented by ongoing proceedings before the Public Utilities Commission and to provide funding necessary to protect the public health and safety, it is necessary for this act to take effect immediately.~~

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